Finally, the Board seeks to amend section 2649, to increase its fee for a temporary certificate from $50 to $100; increase its fee for a duplicate certificate from $25 to $50; increase its fee for late notification of a change of address from $25 to $50; and increase its fee for a branch office from $25 to $50.

The Board was scheduled to hold a public hearing on these proposed regulatory changes on January 25 in Sacramento.

BLA/CLARB Exam Task Analysis. CLARB has begun conducting a nationwide task analysis to identify the range of services rendered by landscape architects in all areas of practice. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 78 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 96 for background information.) From this list of services, CLARB will identify the knowledge, skills, and abilities required to provide proper service and will test future licensure candidates accordingly. To achieve an accurate analysis leading to an appropriate exam, CLARB has requested that each state board furnish a list of all licensees including their name, address, and information available on the nature of their practice.

According to BLA, CLARB plans to create a new exam by 1992, and is planning on having the National Grading Session in La Jolla, California this year.

LEGISLATION:

Anticipated Legislation. BLA will actively seek legislation similar to Business and Professions Code section 5550.3, which applies to the Board of Architectural Examiners (BAE). Section 5550.3 allows BAE to adopt guidelines for the delegation of its authority to grade the examinations of licensure applicants to any vendor under contract to the Board for provision of an architect's registration examination. The guidelines are to include goals for the appropriate content, development, grading, and administration of an examination, against which the vendor's rules and procedures may be judged; and procedures through which BAE can reasonably assure itself that the vendor adequately meets the Board's goals. BLA's legal counsel is expected to draft similar legislation and request that it be put in the Department of Consumer Affairs' omnibus bill.

Additionally, at its October 26 meeting, the Board approved a motion to direct staff to seek revisions to Business and Professions Code section 5651, to allow the Board to accept CLARB-certified individuals to become licensed in California.

FUTURE MEETINGS:

To be announced.

MEDICAL BOARD OF CALIFORNIA

Executive Director: Ken Wagstaff
(916) 920-6393
Toll-Free Complaint Number:
1-800-MED-BD-CA

The Medical Board of California (MBC) is an administrative agency within the state Department of Consumer Affairs. The Board, which consists of twelve physicians and seven lay persons appointed to four-year terms, is divided into three autonomous divisions: Licensing, Medical Quality, and Allied Health Professions.

The purpose of MBC and its three divisions is to protect the consumer from incompetent, grossly negligent, unlicensed, or unethical practitioners; to enforce provisions of the Medical Practice Act (California Business and Professions Code section 2000 *et seq.*); and to educate healing arts licensees and the public on health quality issues. The Board's regulations are codified in Division 13, Title 16 of the California Code of Regulations (CCR).

The functions of the individual divisions are as follows:

MBC's Division of Licensing (DOL) is responsible for issuing licenses and certificates under the Board's jurisdiction; administering the Board's continuing medical education program; suspending, revoking, or limiting licenses upon order of the Division of Medical Quality; approving undergraduate and graduate medical education programs for physicians; and developing and administering physician and surgeon examinations.

The Division of Medical Quality (DMQ) reviews the quality of medical practice carried out by physicians and surgeons. This responsibility includes enforcement of the disciplinary and criminal provisions of the Medical Practice Act. The division operates in conjunction with fourteen Medical Quality Review Committees (MQRC) established on a geographic basis throughout the state. Committee members are physicians, other health professionals, and lay persons assigned by DMQ to investigate matters, hear disciplinary charges against physicians, and receive input from consumers and health care providers in the community.

The Division of Allied Health Professions (DAHP) directly regulates five non-physician health occupations and oversees the activities of eight other examining committees and boards which license non-physician certificate holders under the jurisdiction of the Board. The following allied health professions are subject to the jurisdiction of DAHP: acupuncturists, audiologists, hearing aid dispensers, medical assistants, physical therapists, physical therapist assistants, physician assistants, podiatrists, psychologists, psychological assistants, registered dispensing opticians, research psychoanalysts, speech pathologists, and respiratory care practitioners.

DAHP members are assigned as liaisons to one or two of these boards or committees, and may also be assigned as liaisons to a board regulating a related area such as pharmacy, optometry, or nursing. As liaisons, DAHP members are expected to attend two or three meetings of their assigned board or committee each year, and to keep the Division informed of activities or issues which may affect the professions under the Medical Board's jurisdiction.

MBC's three divisions meet together approximately four times per year, in Los Angeles, San Diego, San Francisco, and Sacramento. Individual divisions and subcommittees also hold additional separate meetings as the need arises.

MAJOR PROJECTS:

Physician Discipline Reform. SB 2375 (Presley)—also known as the Medical Judicial Procedure Improvement Act—is a 39-section bill signed by the Governor on September 30 (Chapter 1597, Statutes of 1990) which infuses DMQ's discipline system with information on physician misconduct and negligence from a wide variety of sources; authorizes DMQ to suspend a physician's license on an interim basis pending conclusion of the disciplinary process; injects a much-needed prosecutorial influence into the process; and creates a special panel of administrative law judges to hear medical discipline cases. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 79-80 and 84; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 21 and 74-75; and Vol. 9, No. 2 (Spring 1989) pp. 1 and 60 for extensive background information concerning SB 2375 and physician discipline.)

At its November meeting, DMQ took no direct action to implement SB 2375; however, concern was raised about the funding necessary to finance the overhauled discipline system. Presently, the Medical Board's licensing fee is $360 every two years; this revenue funds the Board's activities. Under existing statute, the Board may charge each physician up to $400 every two years. If the

rate is increased to the maximum, an additional $2 million will be raised over a two-year period. However, MBC predicts that the cost of SB 2375 will be approximately $2.4 million per year. MBC Executive Director Ken Wagstaff commented that in order to properly implement the new discipline program, it may be necessary to raise the licensing fee to $500 per physician every two years (which is approximately half of what California attorneys pay in Bar dues; attorneys in practice for three years or more pay $476 per year). Such a move would require legislation.

DMQ public member Frank Albino suggested that, if DMQ wishes to keep the figure below $500 every two years, it adopt a cost recovery program wherein DMQ's investigation costs would be passed on to physicians who are ultimately disciplined. DMQ Enforcement Chief Vern Leeper was asked to report at the February meeting on the amount that would have been saved during the last fiscal year if such a program had existed.

In a related matter, DMQ's Enforcement Program reported that formal investigations have dropped from 51% of complaints received to 40%. Program staff pointed out that the 51% figure includes only formal major investigations and not other minor complaints which are investigated and dismissed. DMQ members expressed concern that this method of reporting may give the appearance that fewer cases are being investigated, and asked the Enforcement Program to track and report on all cases investigated, at any level. According to Enforcement officials, the decrease in major investigations is due in part to an increase in the numbers of minor cases received through DMQ's new Centralized Complaint Intake Unit, which includes a toll-free consumer complaint line. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 79 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 98 for background information.)

DMQ's Discipline Case Backlog. For the past several years, much legislative and public attention has been focused on the growing backlog of discipline cases piling up within DMQ. In early 1989, the Legislative Analyst found that 789 medical discipline cases were unassigned to DMQ investigators; in 1990, the Legislative Analyst found that number to have increased to 870 cases as of December 31, 1989, in spite of the fact that DMQ had requested and received 28 additional investigator positions. In response to a legislative attempt to halve MBC's 1990-91 funding, DMQ simply assigned many of these backlogged cases to its investigators, thereby reducing the backlog of "unassigned cases" to 525 by September 1990, but increasing the number of cases "under investigation" to 1,501. DMQ itself admitted that this was simply a shift of numbers from one column to another, and accomplished nothing toward decreasing the actual backlog or increasing public protection. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 79-80 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 97-98 for background information.)

At its November meeting, DMQ discussed its continuing need to establish a new classification system and higher salary scale for its investigator positions, to facilitate retention of trained investigators. Although DMQ submitted a proposed three- tiered investigator classification system (with proposed pay increases for all levels) to the Department of Consumer Affairs (DCA) and the Department of Personnel Administration (DPA) in July 1990, that proposal is still pending.

In the meantime, DMQ has been able to fill all but one investigator opening. In November, DMQ Chief Vern Leeper reported that many of the new enforcement agents are former police investigators from the San Francisco Bay Area who have been able to assume a full caseload almost immediately; Leeper stated that all but 10% of DMQ's investigators are carrying a full caseload. Leeper also recommended that DMQ make permanent eightlimited- term investigator positions which are scheduled to expire on June 30, 1991. Leeper warned that, although the majority of DMQ's long-vacant investigator positions have now been filled, as many as 18 of the present staff are anxiously awaiting DCA/DPA approval of DMQ's proposed reclassification plan, and may leave DMQ if the plan is not approved.

Leeper also noted that in order to meet SB 2375's goal that an average of no more than six months elapse from the receipt of a complaint to the completion of an investigation, DMQ's backlog of cases must be depleted. At present, DMQ reports a turnaround time of nine to twelve months.

DMQ's Diversion Program. At its November meeting, DMQ members and staff continued their discussion of the scope and procedures of the Diversion Program started at the September meeting. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 81 for background information.) The Program, established in Business and Professions Code section 2340 *et seq.*, was created to enable DMQ to "identify and rehabilitate physicians and surgeons with impairment due to abuse of dangerous drugs or alcohol, or due to mental illness or physical illness, affecting competency so that physicians and surgeons so afflicted may be treated and returned to the practice of medicine in a manner which will not endanger the public health and safety." DMQ is authorized to divert physicians into this program as an alternative to instituting discipline proceedings. Approximately 60% of those who enter the program are required to participate; the other 40% are self-referred.

During the September meeting, DMQ discussed whether sex offenders should be admitted (or self-referred) into the Diversion Program, and the extent to which such participation should immunize the physician from disciplinary action. At the November meeting, DMQ clarified its position on this issue: Where a complaint has been made for sexual transgressions and investigation determines there is a prosecutable case, the case will be prosecuted in the normal disciplinary process, notwithstanding self-referral or referral to Diversion.

At the November meeting, DMQ discussed the conditions under which the Diversion Program should refer to the Enforcement Program physicians who have "unsuccessfully terminated" their participation in Diversion. The major concern is the fine line between preserving doctor-patient confidentiality and the need to inform the Enforcement Program in order to protect public safety. At its November meeting, DMQ had no quorum and thus could take no formal action; however, it recommended that the following policy be approved at its February meeting:

(1) The diversion files of Board-referred physicians who unsuccessfully terminate will be referred to enforcement (regardless of the reason for the termination) for evaluation, the reopening of a prior case, or the initiation of a new disciplinary action.

(2) The diversion files of self-referred physicians who unsuccessfully terminate will be referred to enforcement if the Diversion Evaluation Committee regards the participant as a danger to him/herself or the practice of medicine.

(3) The files of physicians who have been disciplined and are participating in the Diversion Program as part of DMQ-ordered probation will be immediately referred to enforcement if the physician commits an act which is a violation of probationary terms and conditions.

DMQ public member Gayle Nathanson expressed concern that, if an individual "unsuccessfully terminates," that termination in and of itself represents a danger to the public. Chet Pelton

responded that Nathanson's perception is not necessarily true, for the Diversion Program's standards are extremely high. As an example, he cited a self-referred alcoholic who had been sober for over two years and decided to stop attending AA meetings. The Diversion Program characterized this as "unsuccessful termination" of the program, yet perceives no danger from that individual unless there is evidence of resumed alcohol intake.

The DMQ members present chose the above-described policy over an alternative proposal, under which all unsuccessful terminations would be referred to enforcement under any circumstances. Diversion Program Manager Chet Pelton stated that such a policy would deter self-referral into the program, and would inhibit physicians who may be a potential danger to patients from seeking proper treatment.

The policy recommended by DMQ, which is supported by the California Medical Association (CMA), was scheduled for a vote at DMQ's February 8 meeting.

MBC to leave DCA? At its November meeting, MBC discussed the draft of a letter it intended to send to Governor Wilson and his transition team expressing the Board's desire to leave the Department of Consumer Affairs and become either an autonomous agency or, in the alternative, a department within the Health and Welfare Agency. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 81; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 98; and Vol. 9, No. 3 (Summer 1989) p. 55 for background information on the Board's dissatisfaction with and desire to leave DCA.) The draft letter asserted that the Board's placement within DCA "philosophically...limits the broad policy-making responsibilities of MBC," and is an "obsolete concept." The letter went on to assert that "autonomy for MBC would be effective for the magnitude of the Board's tasks;" and that, if autonomy is unacceptable, "departmental status in the Health and Welfare Agency (HWA) would be a viable alternative," as MBC and HWA "share a multitude of interests."

Board member Alfred Song stated his belief that such statements were "conclusions with no real supporting arguments," and that while he was "all for the concept of independence for MBC," he felt the draft letter should be "reworked."

Related to Song's concern was a request by Executive Director Ken Wagstaff that the letter not mention MBC's staff since, according to Wagstaff, the Board had not listened to staff regarding the proposed move from DCA. Wagstaff stated that although staff has told the Board that DCA is not responsive to MBC and does not provide the Board with the support it needs, the staff had never recommended a move to HWA. He told the Board that the initial idea to evaluate the position of the Board in state government has turned into a "creeping process that is getting ahead of the Board," and that "as Mr. Song pointed out, the Board has never debated what the issues are." Further, Wagstaff noted that the Board had not discussed the effect any move from DCA might have on the Board's ability to protect the public. In response, Dr. J. Alfred Rider, MBC's president and a proponent of the proposed move from DCA, agreed to strike the reference to MBC's staff, while noting that it is "not the prerogative of staff" to tell the Board where it should be within state government anyway.

Thus, despite the criticism voiced by Song and Wagstaff and an additional query by public member Gayle Nathanson as to whether the Board had sufficiently educated itself regarding the desirability of leaving DCA, the consensus of the Board was that the letter should be sent, and that all arguments for and against the move would be aired later, possibly in a meeting with Governor Wilson's transition team. The Board emphasized its belief that it must act immediately in order to ensure that its desire to leave DCA is included on the agenda of the new administration. Consequently, the substantive questions regarding the Board's potential move from DCA—including a potential increase in costs to operate the Board, the effect of a move on the Board's ability to serve the public, and alternatives to moving—were not investigated in any depth.

On January 2, Loren Kaye of Governor Wilson's transition team responded to the Board's letter, rejecting consideration of moving MBC to HWA. Instead, Kaye informed the Board that Governor Wilson "is anxious to review the Department of Consumer Affairs' analysis of the structure of the Department's central services and the possible consolidation of functions among the 39 Boards and Commissions." That review, said Kaye, is expected to be issued in March.

Resolving DAHP's Identity Crisis. At its November meeting, DAHP announced its intention to put its proposal to amend Business and Professions Code section 2006 "on the back burner." The proposed legislation had been the centerpiece in the Division's effort to clarify and expand its present authority over the individual allied health boards and committees. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 81-82; Vol. 10, No. 1 (Winter 1990) p. 77; and Vol. 9, No. 4 (Fall 1989) pp. 63-64 for background information.) The Division decided not to pursue the proposed legislation this year, opting instead to work with the allied health boards and committees within the parameters of present section 2006, which provides the Division with "responsibility" for the allied health groups but provides no explicit muscle enabling DAHP to assert itself into their affairs in a manner in which some members believe necessary. Aside from the general grant of authority under section 2006, the Division maintains additional control to differing degrees over the individual groups depending on the specific enabling statutes of each.

The decision to drop the proposed amendments to section 2006 apparently came in response to the strong opposition demonstrated by the individual boards and committees at a special joint meeting held on October 17 specifically for discussion of the proposal. At the October meeting, representatives of the individual allied groups were unified in their view that the legislation would only serve to create an extra, unnecessary layer of government. They questioned the Division's expertise to act in a supervisory role over their respective boards and committees, and pointed out that the Division does not exercise the authority it currently possesses under existing section 2006. Furthermore, the representatives of the individual boards and committees pointed out that the DAHP liaisons to the individual boards and committees rarely attend the meetings of their assigned groups.

Reflecting on these criticisms at its November meeting, the Division declared its intention to proceed under present section 2006 in a "spirit of cooperation" with the individual boards and committees for which it has statutory "responsibility." DAHP member Bruce Hasenkamp urged the liaisons to attend at least one meeting of their assigned group each year, and asked the Division's staff to reach out more to the boards and committees in an effort to be more helpful, and thereby dispel the current feeling that DAHP's staff is uncooperative. Additionally, Hasenkamp expressed hope that the boards and committees would attempt to iron out differences with the Division regarding their proposed legislation before introducing it, and thereby possibly benefit from the Division's subsequent support of such legislation. Lastly, Hasenkamp called for the scheduling of regular

forums between the Division and the individual boards and committees at each Division meeting.

DAHP member Alfred Song, who originally started the section 2006 amendment ball rolling, acknowledged the wisdom of dropping the proposed legislation, but only because its chances for success at this time are "minimal." Song disagreed with Hasenkamp's approach and stated that he considered his attendance as a liaison at Acupuncture Committee meetings a waste of time and state money without more statutory authority to affect the Committee's actions. According to Song, the bottom line is that the Division must either amend section 2006 at some future date to reassert its authority over the allied health boards and committees, or engage in serious discussion regarding the need to maintain DAHP as part of the Medical Board.

DAHP Regulatory Action. On November 9, the Office of Administrative Law (OAL) approved DAHP's amendment to regulatory section 1374(h), Division 13, Title 16 of the CCR, which relaxes the graduation requirement for research psychoanalysts. Thus, completion of one psychoanalysis is now "highly recommended" instead of "required." (See CRLR Vol. 10, No. 1 (Winter 1990) p. 77 for background information.)

On October 12, DCA Director Michael Kelley notified DAHP that he had disapproved the Physician Assistant Examining Committee's (PAEC) scope of practice regulations. (*See infra* agency report on PAEC for further information.) The Director found that the regulations are "injurious to the public health, safety, and welfare," and would allow "inadequate supervision in medical procedures of a substantial and complex nature." However, at DAHP's November 16 meeting, the Division overrode DCA's rejection with the required unanimous vote. DAHP believes the regulations at issue, as well as other regulations governing PAs, presently provide for sufficient PA supervision. Thus, the regulations are now pending before OAL for approval.

At its November 16 meeting, DAHP reported that it had resubmitted its package of medical assistant (MA) regulations to the DCA Director. The new regulations, which define the technical supportive services which may be performed by a MA, had been submitted to OAL on July 27 and disapproved on August 27, partly because DAHP had failed to submit the regulations to the DCA Director for review, as required by Business and Professions Code section 313.1. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 82 for additional background information.) However, DCA Director Kelley disapproved the regulations on December 13, on the basis that they delegate too much responsibility and discretion to MAs. Under the Administrative Procedure Act, the disapproval left the Division with only fourteen days (until December 27—120 days after the original submittal to OAL) in which to override the Director, ten of which were required for public notice. The Division had discussed this possibility at its November meeting, and had tentatively planned to schedule an emergency meeting to override the Director if necessary. However, when notified of Kelley's actual disapproval, the Division decided against such an emergency meeting, apparently opting instead to simply reinitiate the entire rulemaking process in 1991.

Also at its November meeting, DAHP continued the public hearing to discuss the Hearing Aid Dispensers Examining Committee's (HADEC) proposed citation and fine regulations, and subsequently approved the regulations. (*See infra* agency report on HADEC for further information.)

Section 1324 Programs. After three public hearings, numerous amendments, and considerable debate, DOL finally adopted proposed regulatory amendments regarding DOL-approved clinical training programs for foreign medical graduates (FMGs) at its November meeting. Section 1324, Division 13, Title 16 of the CCR, provides an alternative training route, commonly known as "section 1324 programs," for FMGs who have difficulty securing a residency accredited by the Accreditation Council on Graduate Medical Education (ACGME), which traditionally accredits all residencies. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 83; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 100; and Vol. 10, No. 1 (Winter 1990) p. 76 for extensive background information.)

In amending section 1324 and preserving the programs, DOL resisted the suggestion of every medical school in California and the CMA that section 1324 programs be abolished, and rejected numerous amendments recommended by CMA should the Division insist on retaining the programs. Specifically, the amendments approved by DOL at its November meeting include the following:

-DOL deleted previous language requiring section 1324 programs either to have an affiliation agreement with an approved medical school or to be the site of an accredited residency program;

-although several DOL members had previously articulated serious concern over the exploitative nature of some section 1324 programs, DOL deleted language prohibiting a section 1324 facility from charging the trainee any fee for participation in the program, and substituted a provision permitting the facility to charge each trainee up to $5,000 per year for program participation;

-DOL deleted previous language requiring the section 1324 facility to pay each trainee a stipend for services, and instead only authorized the payment of a stipend;

-instead of requiring each staff teacher to be board certified in his/her own specialty area, the modified language permits staff to teachers to be "board-eligible, or [to] have equivalent training and experience" in his/her specialty area of teaching; and

-DOL retained a provision requiring all section 1324 medical directors to have an M.D. degree, against arguments by the Board of Osteopathic Examiners and the College of Osteopathic Medicine of the Pacific that DOL is illegally discriminating against osteopaths in violation of Business and Professions Code section 2453.

An additional area of concern is the apparent conflict of interest of DOL member Dr. J. Alfred Rider, who operates a section 1324 program at his facility in San Francisco. Dr. Rider participated in the discussions of section 1324 programs at both DOL's September and November meetings, which would appear to violate several provisions of DOL's conflict of interest code. When asked by a representative of the Center for Public Interest Law to cease his participation in the discussion at the November meeting, Dr. Rider recused himself from the vote on the regulations.

Because the Division modified the language of the proposed amendments at the November meeting, its approval of the amendments was conditioned upon release of the modified language for an additional 15-day public comment period ending on December 15. These amendments await review and approval by both the DCA Director and OAL.

Satisfaction of Continuing Medical Education Requirements. Currently, section 1337(3)(b), Division 13, Title 16 of the CCR, states: "A maximum of one-third of the required hours of continuing education may be satisfied by teaching or otherwise presenting a course or program approved under this section." At its November meeting, DOL discussed whether to increase the eight-hour maximum credit allowed under section 1337.

In 1977, DOL developed its continuing medical education (CME) program based on the policies and requirements utilized by CMA. According to CMA, a limit on the number of CME credits that could be awarded for teaching was imposed because physicians need a variety of CME experiences in order to ensure their continuing competence. Once a course or program is developed, its teaching becomes repetitious and includes little or no new learning experience. CME requirements are intended to broaden the physician's scope of knowledge and to discourage confinement to special interests. Thus, in recommending that DOL leave section 1337 intact, DOL staff argued that its current requirement of a variety of CME courses before a physician may renew his/her license facilitates the continuing competence of California physicians and the overall protection of the citizens in this State.

Despite staff's recommendation, DOL members carried a motion made by Dr. J. Alfred Rider to initiate a regulatory change raising the allowable CME teaching hours to twelve. DOL has yet to notice this proposal for a public comment period, hearing, and OAL review.

DOL Rulemaking. Following September and November public hearings, DOL adopted proposed amendments to section 1351, Division 13, Title 16 of the CCR, which increase the examination fee for the Federal Licensing Examination (FLEX) and set the fee for the Special Purpose Examination (SPEX) at $375. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 83 for background information.) These proposed amendments await OAL review and approval.

On November 27, DOL resubmitted its proposed amendments to section 1328 to OAL, following OAL's rejection of those amendments in August. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 83-84 and Vol. 9, No. 4 (Fall 1989) p. 63 for background information.) The amendments would specify that DOL's "written examination" requirement for FMGs may be satisfied by either (1) Components I and II of the FLEX, or (2) Parts I and II of the National Board of Medical Examiners (NBME) exam, plus Component II of the FLEX. At this writing, the proposal is still under OAL review.

LEGISLATION:

DMQ is considering sponsorship of a limited amount of legislation in 1991. At DMQ's November meeting, Ken Wagstaff suggested that DMQ focus its attention on the sweeping discipline legislation enacted in 1990. Specifically, Wagstaff urged the Division to consider the amount of rulemaking which will be necessary to implement SB 2375 (Presley), signed into law on September 30. (*See supra* MAJOR PROJECTS.)

At its February meeting, DMQ was scheduled to consider one new bill in the area of liability for retired physicians who wish to donate their services at free clinics. DMQ public member Frank Albino suggested that, with the rising cost of malpractice insurance, many retired physicians who would otherwise donate their services do not, for they cannot afford to carry the insurance and free clinics cannot absorb this cost. Maryland and Maine have statutes which absolve doctors performing services for no financial gain from malpractice liability, unless the doctor's conduct is willful, wanton, or intentional. Various members of DMQ expressed the opinion that since most plaintiffs allege willful, wanton, or intentional conduct in their complaints, the legislation would serve no constructive purpose. However, DMQ agreed to review the proposed language at its February meeting.

At its November meeting, DOL staff presented members with several draft legislative amendments. Section 2176 of the Business and Professions Code would be amended to give the Division discretion to designate more than one acceptable exam for licensure. Staff also proposes to delete language from sections 2183 and 2184, originally established to regulate only DOL's examination process, so the statute will accommodate the national FLEX exam which DOL utilizes for FMGs. Finally, DOL is still discussing with Assemblymember Filante the possibility of his authorship of a bill to increase the postgraduate training required for licensure from one to two years. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 82-83; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 99-100; and Vol. 10, No. 1 (Winter 1990) pp. 75-76 for detailed background information on this issue.)

LITIGATION:

On October 9, the U.S. Supreme Court denied plaintiffs' petition for certiorari in *Dr. Le Bup Thi Dao v. Board of Medical Quality Assurance*, a civil rights action against DOL for its refusal to license 32 Vietnamese physicians without hearing or explanation for a two-year period during 1986-88. The Court's denial of the petition leaves intact an unpublished First District Court of Appeal ruling precluding civil rights plaintiffs from recovering damages against a state agency or state officials found to be acting within their official capacities. Having secured licensure for their clients some two years earlier, plaintiffs' counsel at the Center for Public Interest Law (CPIL) agreed to dismissal of the remainder of the lawsuit in November. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 86; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 102-03; and Vol. 9, No. 4 (Fall 1989) pp. 64-65 for detailed background information on this case.)

In late November, MBC filed a motion to collect over $375,000 in attorneys' fees and costs against CPIL's Vietnamese refugee clients, on grounds that plaintiffs' action was frivolous and groundless. CPIL resisted that motion and filed a cross-motion for its own fees, as it had represented its clients on a pro bono basis. On January 18, San Francisco Superior Court Judge Stuart Pollak denied MBC's motion outright, stating that he would not order the Vietnamese physicians to pay MBC's attorneys' fees even if he determined the Board to have been the prevailing party in the case (which he did not). Instead, Judge Pollak found that Dr. Dao and her colleagues were the prevailing parties, and that CPIL's action resulted in the enforcement of important rights and conferred a significant benefit on a substantial group of people. The court found that CPIL was entitled to recover its fees under both the federal civil rights laws (42 U.S.C. § 1988) and the state "private attorney general" doctrine (Code of Civil Procedure § 1021.5). MBC was ordered to pay CPIL over $76,000 in attorneys' fees and costs.

In *Street v. Superior Court (Chang)*, 90 D.A.R. 12487, No. G009752 (Nov. 1, 1990), the Fourth District Court of Appeal reversed a summary judgment issued by the Orange County Superior Court in favor of Dr. Chang, holding that a physician who owns a medical facility and renders allegedly negligent aid to a scheduled patient is not immune from liability under California's Good Samaritan laws, Business and Professions Code sections 2395-96.

Plaintiff Street went to Chang's clinic for a routine intravenous pyelogram. When a radiologist injected Street with a dye necessary for the test, Street suffered an allergic reaction almost immediately. Chang, who was treating a patient in another room, rushed to the radiology room when called for assistance. Chang had no training in advanced cardiac life support and had never treated a patient suffering anaphylactic shock. When paramedics arrived, they attempted to take control of the patient and to open an airway to deliver oxygen. Chang refused, stating, "I will control the patient," and "I just

want you to transport her to the hospital across the street." Street went without oxygen for eight to ten minutes, which led to a grand mal seizure; she died within hours. Her husband and son brought suit against Chang, alleging several counts of liability. Although the trial court determined that a triable issue existed as to whether Chang was grossly negligent, the judge granted Chang's summary judgment motion on grounds that he was immune from suit because the Good Samaritan statutes shield a physician tortfeasor from liability even for gross negligence.

The Fourth District reversed and remanded, ordering the lower court to enter a new order denying the motion. The court stressed that the Good Samaritan statutes are directed toward physicians who "by chance and on an irregular basis, come upon or are called to render emergency medical care." The court cited a recent Georgia case for the proposition that "if the doctor had a particular employment duty to aid the patient at the hospital...then he had a duty to the patient to begin with; and in such a case he does not need a special inducement to offer aid, [and] the aid he offers is not 'voluntary' in the sense of a Good Samaritan...." The appellate court specifically held that the lower court should not have applied the Good Samaritan laws since Street was a scheduled patient in Chang's own clinic.

RECENT MEETINGS:

At its November meeting, MBC reported on its continuing efforts to revive the Physician Loan Incentive Program, which ran for eight years but was terminated two years ago for apparent inefficacy. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 86 and Vol. 10, No. 1 (Spring 1990) p. 77 for background information.) Dr. Madison Richardson, chair of the Special Committee on Physician Loans for Underserved Areas, reported that a special conference will be held in Sacramento in either January or February 1991 in order to further determine how the Board can be most effective in administering the revived program. Other than MBC, participants at the conference will include representatives from the National Health Service Corps, the Office of Statewide Health Planning and Development, the Medi-Cal program, and possibly even some malpractice insurance carriers. Dr. Richardson stated his hope that such a broad base of participants will give the Board a better idea on how to proceed so as to properly integrate and coordinate its limited resources with those of the other interested organizations.

Also at its November meeting, MBC elected officers for 1991. The full Board elected Dr. John Tsao as President, Dr. Fred Milkie as Vice-President, and Dr. Jacquelin Trestrail as Secretary. DAHP selected public member Bruce Hasenkamp as President and Dr. Madison Richardson as Vice-President. DMQ elected public member Frank Albino as President and public member Theresa Claassen as Secretary. DOL selected Dr. J. Alfred Rider as President and public member Audrey Melikian as Secretary.

FUTURE MEETINGS:

May 9-10 in Sacramento.

ACUPUNCTURE COMMITTEE

Executive Officer: Lynn Morris
(916) 924-2642

The Acupuncture Committee (AC) was created in July 1982 by the legislature as an autonomous body; it had previously been an advisory committee to the Division of Allied Health Professions (DAHP) of the Medical Board of California.

Formerly the "Acupuncture Examining Committee," the name of the Committee was changed to "Acupuncture Committee" effective January 1, 1990 (Chapter 1249, Statutes of 1989). That statute further provides that on and after July 1, 1990, and until January 1, 1995, the examination of applicants for a license to practice acupuncture shall be administered by independent consultants, with technical assistance and advice from members of the Committee.

Pursuant to Business and Professions Code section 4925 *et seq.*, the Committee sets standards for acupuncture schools, monitors students in tutorial programs (an alternative training method), and handles complaints against schools and practitioners. The Committee is authorized to adopt regulations, which appear in Division 13.7, Title 16 of the California Code of Regulations (CCR). The Committee consists of four public members and five acupuncturists. The legislature has mandated that the acupuncturist members of the Committee must represent a cross-section of the cultural backgrounds of the licensed members of the profession.

MAJOR PROJECTS:

Approval of Acupuncture Schools. At a September 20 press conference in Los Angeles, AC Chair David Chen attempted to clarify the situation of acupuncture schools which have yet to meet the standards of the Council for Private Postsecondary and Vocational Education (CPPVE), which now approves private postsecondary degree-granting educational institutions instead of the Private Postsecondary Education Division (PPED) of the State Department of Education.

As amended by AB 4671 (Elder) in 1988 (see CRLR Vol. 8, No. 3 (Summer 1988) p. 66 for background information), Business and Professions Code section 4939 requires all acupuncture schools approved by AC to become approved by CPPVE under Education Code section 94310 by September 1, 1990, or within five years of initial approval by the Committee, whichever is later. AC is required to file an accusation against any acupuncture school which fails to meet this deadline, seeking to remove AC's approval of that school.

At the September 20 press conference, Chen stressed to students at several schools which had failed to meet the statutory deadline that AC no longer has authority to approve their schools, and that the curriculum at those schools is no longer satisfactory for licensure purposes.

At AC's October 25 meeting, AC Executive Officer Lynn Morris reviewed the status of five schools which had failed to meet the deadline. A number of these schools had submitted their applications for approval to CPPVE as far back as 1989 and had been visited by representatives of CPPVE during 1990, but had received no word as to their status. Legal representatives of some schools which had been informed by CPPVE that they had achieved "candidacy" status urged AC to consider "candidacy" status as equivalent to full approval, such that AC should reinstate its approval of those schools. Committee Chair Chen stated that AC supports the schools and does not want to see them fail, but stressed that AC has no authority to approve the schools until CPPVE approves the schools, and referred all legal questions concerning the schools' status to the Attorney General's Office.

Special Task Force on Continuing Education. On November 30, a special AC task force held an informational hearing in Monterey Park to discuss implementation of SB 633 (Rosenthal) (Chapter 103, Statutes of 1990), which added section 4945.5 to the Business and Professions Code. That section requires all acupuncturists licensed prior to January 1, 1988, to complete 40 hours of continuing education (CE) in six specified subject areas by January 1, 1993.

At the hearing, representatives from acupuncture schools and professional associations, CE providers, and

members of the profession discussed several recommendations for implementing the new requirement. Among other things, the task force defined the types of courses which could be included in the six subject matter areas; and decided that at least four hours should be taken in each required subject matter area, and that the remaining 16 hours could be concentrated in any of the specified areas. The task force also recommended that AC use its existing method for approving CE providers, but that staff should develop a system for efficiently monitoring compliance. The task force was scheduled to present its recommendations to the full Committee at its January meeting.

DAHP Drops Legislation to Tighten Control Over Allied Health Committees. On October 17, the Medical Board's DAHP and representatives of all the allied health boards and committees met to discuss DAHP's proposed amendment to Business and Professions Code section 2006, to give DAHP tighter control over the activities of the allied health professions. (*See supra* agency report on MBC; *see also* CRLR Vol. 10, No. 4 (Fall 1990) p. 87 for background information.) Although all the allied health groups expressed strong and unified opposition to the proposal, AC Chair David Chen expressed particularly harsh criticism of the concept. He apologized to the other allied health boards and committees for the AC examination scandal which was the catalyst for DAHP's proposal, but argued that AC has made significant strides toward ensuring that such a scandal will not be repeated. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 103-04; Vol. 9, No. 4 (Fall 1989) p. 65; and Vol. 9, No. 3 (Summer 1989) p. 58 for background information on the bribery indictment of former AC member Chae Woo Lew for selling the Committee's licensing exam.) Dr. Chen contended that DAHP's proposal was unnecessary and unjustified.

At its November 16 meeting, DAHP decided to drop its plans to amend section 2006, and to attempt to work more cooperatively with the allied health boards and committees under its jurisdiction.

Examination Preparation. At the Committee's October 25 meeting, Norman Hertz of the Department of Consumer Affairs' Central Testing Unit briefed AC on the progress of Hoffman Research Associates (HRA) in preparing AC's new licensing exam. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 104 for background information.) HRA is currently conducting an occupational analysis of the practice of acupuncture. This work involves visits to thirty practitioners in order to prepare an initial list of tasks, skills, and knowledge required to perform acupuncture; conducting several focus groups to discuss the findings from the interviews and refine the list; and preparation of a questionnaire which will be sent to all acupuncturists in California. Once the questionnaires are returned and data are analyzed, the results from the analysis will form the basis for the new 1991 licensing exam.

AC member Leona Yeh noted that HRA will also develop hygienic protocol for the exam, and is currently developing a study guide and reference list for the test. The 1991 written exam is scheduled for May 3-4 at the Oakland Convention Center; the clinical exam is scheduled for June 8-9 at UCLA.

RECENT MEETINGS:

At AC's October 25 meeting, Chair David Chen appointed Lindsay Davidson as chair of the Tutorial and Continuing Education Subcommittee, and Mason Shen as chair of the Enforcement Subcommittee.

Also at the October meeting, Executive Officer Lynn Morris stated that approximately fifty disciplinary actions have been commenced by the Attorney General's Office against acupuncturists who allegedly purchased the AC licensing exam from former AC member Chae Woo Lew.

AC's December 6 meeting was cancelled.

FUTURE MEETINGS:

March 21 in San Francisco.
July 18 in San Diego.
October 17 in Los Angeles.

HEARING AID DISPENSERS EXAMINING COMMITTEE

Executive Officer: Elizabeth Ware (916) 920-6377

Pursuant to Business and Professions Code section 3300 *et seq.*, the Medical Board of California's Hearing Aid Dispensers Examining Committee (HADEC) prepares, approves, conducts, and grades examinations of applicants for a hearing aid dispenser's license. The Committee also reviews qualifications of exam applicants, and is authorized to issue licenses and adopt regulations pursuant to, and hear and prosecute cases involving violations of, the law relating to hearing aid dispensing. HADEC has the authority to issue citations and fines to licensees who have engaged in misconduct. HADEC recommends proposed regulations to the Medical Board's Division of Allied Health Professions (DAHP), which may adopt them; HADEC's regulations are codified in Division 13.3, Title 16 of the California Code of Regulations (CCR).

The Committee consists of seven members, including four public members. One public member must be a licensed physician and surgeon specializing in treatment of disorders of the ear and certified by the American Board of Otolaryngology. Another public member must be a licensed audiologist. The other three members are licensed hearing aid dispensers.

MAJOR PROJECTS:

Citation and Fine Regulations. In mid-1990, HADEC proposed new regulatory sections 1399.135-.139 to establish a system for issuing citations and fines. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 87-88 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 105 for background information.) Pursuant to Business and Professions Code section 125.9, these rules would authorize HADEC's Executive Officer to issue citations containing orders of abatement and fines for violations of specified provisions of law. DAHP adopted these regulations at its November 16 meeting. At this writing, HADEC is preparing the rulemaking file for submission to the Office of Administrative Law (OAL).

Trainee Supervision Regulations. In late December, HADEC resubmitted to OAL its rulemaking file on new section 1399.115, which sets forth grounds upon which DAHP may deny a hearing aid dispenser the authority to supervise a dispenser trainee. Section 1399.115 was rejected by OAL in August 1990 (see CRLR Vol. 10, No. 4 (Fall 1990) p. 87 for background information); at this writing, OAL is still reviewing the resubmitted file.

DAHP Drops Legislation to Tighten Control over Allied Health Committees. At its December 1 meeting, HADEC discussed the October 17 joint meeting between MBC's Division of Allied Health Professions (DAHP) and representatives of all the allied health boards and committees (including HADEC). At that meeting, the allied health groups expressed strong and unified opposition to DAHP's proposal to seek legislation amending section 2006 of the Business and Professions Code, to give DAHP tighter control over the activities of the allied health professions. (*See supra* agency report on MBC for background information.) HADEC Executive Officer Elizabeth Ware reported that DAHP, at

its November 16 meeting, decided to drop its plans to amend section 2006, and to attempt to work more cooperatively with the allied health boards and committees under its jurisdiction.

RECENT MEETINGS:

HADEC held its last meeting of the year on December 1. Its Examination Subcommittee proposed a new examination schedule under which HADEC would offer three full examinations and three retake examinations per year. In the past, HADEC held two full initial examinations, two written retake examinations, and two full retake examinations per year; on many exam dates, exams were administered concurrently in northern and southern California. The proposed schedule lists just three exam dates per year, and alternates between northern and southern California. HADEC approved the proposal, in hopes that streamlining the schedule will reduce costs, increase staff efficiency, and make it easier for applicants to take the exams.

The Continuing Education Subcommittee reviewed its reimbursement policy for individuals who monitor conferences and workshops on behalf of HADEC and report back to the subcommittee. This monitoring system is designed to keep HADEC apprised of the subject matter of industry conferences, and ensures that Committee standards are met where continuing education credits are given. If a dispenser attends a conference as a HADEC monitor, he/she may receive a fee waiver from the conference host, but may receive no continuing education credit for attendance. In the alternative, the monitor may choose to pay for the conference and receive credit as usual, and still report back to HADEC.

Department of Consumer Affairs budget analyst Phil Coyle reported on the increased revenues HADEC will receive from the fee increase being implemented in 1991. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 87 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 105 for background information.) The Committee's budget will increase in the following areas: $56,000 for enforcement costs; $18,000 for the operating budget; and $2,000 for the implementation of SB 1916, which authorized HADEC to regulate catalog sales of hearing aids. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 88 for background information.)

HADEC postponed the final printing of its consumer pamphlet (see CRLR Vol. 10, No. 4 (Fall 1990) p. 88 for background information), because of confusion expressed over its contents. Concerns were raised that the final draft may not be that which was presented to members of the profession and approved by the Committee. Staff will look into this and report at the next meeting.

FUTURE MEETINGS:

June 15 in San Diego.
September 14 in San Francisco.
December 7 in Los Angeles.

PHYSICAL THERAPY EXAMINING COMMITTEE

Executive Officer: Steven Hartzell
(916) 920-6373

The Physical Therapy Examining Committee (PTEC) is a six-member board responsible for examining, licensing, and disciplining approximately 11,400 physical therapists. The committee is comprised of three public and three physical therapist members. PTEC is authorized under Business and Professions Code section 2600 *et seq.*; the Committee's regulations are codified in Division 13.2, Title 16 of the California Code of Regulations (CCR).

Committee licensees presently fall into one of three categories: physical therapists (PTs), physical therapist assistants (PTAs), and physical therapists certified to practice kinesiological electromyography or electroneuromyography.

PTEC also approves physical therapy schools. An exam applicant must have graduated from a Committee-approved school before being permitted to take the licensing exam. There is at least one school in each of the 50 states and Puerto Rico whose graduates are permitted to apply for licensure in California.

At this writing, no replacement has been appointed for public member Patricia Goodman, who resigned in June. In addition, public member Mary Ann Mayers tendered her resignation in November. As a result, the Committee currently has three PTs and one public member.

MAJOR PROJECTS:

PTEC Clashes With Medical Board Over Investigations. PTEC's dissatisfaction with the Medical Board's investigation of consumer complaints against PTEC licensees came to a head during the fall. For the past two years, the Medical Board's Division of Medical Quality (DMQ) and its investigators have been laboring under a staggering backlog of uninvestigated discipline cases. PTEC, which has traditionally used DMQ's complaint intake and tracking system and its investigators to handle PTEC disciplinary complaints, has become concerned about the lack of attention its cases receive from DMQ investigators. The legislature, acutely aware of DMQ's backlog, passed sweeping legislation in September 1990 to reform DMQ's physician discipline system. (*See supra* agency report on MBC; *see also* CRLR Vol. 10, No. 4 (Fall 1990) pp. 79-80; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 74-75; and Vol. 9, No. 2 (Spring 1989) pp. 1 and 60 for background information on DMQ's physician discipline problems.) Unfortunately, the legislation does not directly address DMQ's handling of consumer complaints against allied health licensing program (AHLP) licensees, including PTEC licensees.

Like other allied health committees, PTEC does not believe that DMQ's practice of handling complaints against AHLP licensees on a low-priority basis is in the best interests of California consumers. Concerned about the growing backlog of PTEC complaints, PTEC Executive Officer Steven Hartzell began to investigate alternatives to the use of DMQ investigators. Last summer, he reported to PTEC that he had discussed the use of investigators from the Department of Consumer Affairs' (DCA) Division of Investigation (DOI) to supplement DMQ investigators. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 89 for background information.) Hartzell finalized these arrangements in early September, and PTEC became a client of DCA's Division of Investigation. Consequently, Hartzell requested that DMQ's consumer services representative (CSR) assigned to PTEC (whose salary is reimbursed by PTEC) route certain PTEC complaints to DOI instead of DMQ investigators.

On September 27, DMQ Enforcement Chief Vern Leeper wrote a memo to Hartzell, informing him that DMQ had decided to cut off all enforcement services to PTEC. Leeper told Hartzell that the computer system of DMQ's new Central Complaints and Investigation Control Unit (CCICU) cannot track a case assigned to a DOI investigator, and that if such a case were entered on DMQ's system, it would forever show as "unassigned to an investigator" because it had not been assigned to a DMQ investigator. Thus, Leeper told Hartzell that all future PTEC cases would be forwarded to the PTEC office for computer entry and routing; no PTEC cases would be entered into DMQ's computer system; and that all backlogged PTEC cases pending with DMQ investigators would be returned to PTEC's office.

Immediately after receiving Leeper's memo on September 27, Hartzell wrote

memos to both Leeper and MBC Assistant Executive Officer Tom Heerhartz, asking MBC to reconsider its decision. Hartzell clarified that he had no intention of exclusively using DOI investigators for PTEC cases, and stated that PTEC decided to utilize DOI because (1) DMQ was not giving priority to PTEC cases, due to its need to decrease its backlog of physician discipline cases because of legislative and public pressure; (2) PTEC's investigative budget cannot afford DMQ investigators; and (3) the billing method used by DOI would enable PTEC to pay DOI in future budget years instead of immediately. Hartzell emphasized that his intention, which he had previously clarified to several high-level DMQ investigators, was to use DOI to supplement DMQ's investigators, not replace them.

On October 1, Heerhartz replied to Hartzell's September 27 memo, informing PTEC that no permanent change would be made regarding DMQ's processing of PTEC cases until the issues were fully aired. However, on November 14, DMQ supervising investigator Dave Thornton wrote Hartzell another memo, informing him that DMQ would close all PTEC cases logged in by CCICU and referred to PTEC for review, unless PTEC returned the case to CCICU with a recommendation for investigation within ten days of referral to PTEC.

On November 17, Hartzell responded that, under Business and Professions Code section 2602, the Medical Board has no authority to close PTEC cases unless directed to do so by the PTEC Executive Officer or Assistant Executive Officer. Hartzell further clarified that most of PTEC cases backlogged in DMQ's system are cases involving unlicensed practice or a single offense—that is, cases in which the Attorney General's office has little interest and which DMQ is unable to investigate due to its own overwhelming backlog. Hartzell informed DMQ that PTEC had implemented its citation and fine authority specifically to deal with these relatively minor cases (see CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 106 and Vol. 9, No. 3 (Summer 1989) p. 59 for background information). Finally, Hartzell pointed out that he was attempting to relieve DMQ of some of its backlog by assigning some PTEC cases to DOI, but had been "hampered by lack of cooperation from the MBC."

At PTEC's December 14 meeting, Hartzell reported that DMQ has backed down and agreed that the ten-day turnaround time is "not necessarily appropriate," and that the two boards have devised a more flexible plan. Hartzell also stated that he is working with DCA on linking DOI's computer system with that of DMQ, so that PTEC cases assigned to DOI investigators may be tracked on the DMQ system.

DAHP Drops Legislation to Tighten Control over Allied Health Committees. At its December 14 meeting, PTEC discussed the October 17 joint meeting between the Medical Board of California's (MBC) Division of Allied Health Professions (DAHP) and representatives of all the allied health boards and committees (including PTEC). At that meeting, the allied health groups expressed strong and unified opposition to DAHP's proposal to seek legislation amending section 2006 of the Business and Professions Code, to give DAHP tighter control over the activities of the allied health professions. (*See supra* agency report on MBC; *see also* CRLR Vol. 10, No. 4 (Fall 1990) p. 89 for background information.) PTEC Executive Officer Steven Hartzell reported that DAHP, at its November 16 meeting, decided to drop its plans to amend section 2006, and to attempt to work more cooperatively with the allied health boards and committees under its jurisdiction.

Supervision of PTAs and Physical Therapy Aides. For the past several months, PTEC has been discussing the appropriate level of supervision for physical therapist assistants (PTAs) (who are required to satisfy certain educational/experience requirements and must be registered with the Committee) and physical therapy aides (unlicensed persons who may assist a PT under the immediate supervision of the PT).

At its October 11 meeting, PTEC held an open forum for discussion of issues regarding the supervision of PTAs and aides. Several speakers noted that many PTs are unfamiliar with state law and regulations in this area, and urged PTEC to educate its licensees as to the PT's responsibility as a supervisor of PTAs and aides. Others commented that many PTs are not supervising PTAs and aides closely enough, such that PTAs and aides are unlawfully performing physical therapy. Still others stated that PTEC should adopt rules specific to varying practice settings, *e.g.*, the home health setting, inpatient facilities, and outpatient facilities.

At its December 14 meeting, the Committee reviewed a draft of proposed changes to its regulations regarding the supervision of PTAs (section 1398.44) and aides (section 1399). Draft changes to section 1398.44 would eliminate PTEC's authority to waive the so-called "50% rule" (which requires the supervising PT to be present in the same facility with a PTA at least 50% of any work week or portion thereof the PTA is on duty); require the PT to evaluate the patient (and document that evaluation) prior to the provision of treatment by a PTA; and clarify when the PT must reevaluate the patient and assess the performance of the PTA. The draft changes also set forth supervision requirements for PTAs functioning in the home care setting. Additionally, draft changes to section 1398.47(a)(3) would require PTA applicants seeking to become registered under that section after June 30, 1994, to have completed 36 of 60 required months of full-time work experience under the direct supervision of a PT in an acute care inpatient facility. Draft changes to section 1399 regarding aide supervision would specify when the PT must reevaluate a patient being treated by an aide, and clarify that the supervising PT must countersign and date all entries in a patient's record made by an aide on the same day patient-related tasks were provided by an aide. Further, new section 1399.1 would prohibit a PT from supervising more than one patient-related task being provided by an aide at any time.

At the December meeting, PTEC instructed staff to prepare the draft regulatory language for formal notice and public hearing.

Other PTEC Regulatory Changes. The Committee is still in the process of preparing the rulemaking package on proposed regulatory changes to sections 1398.20 (regarding the date for submitting applications for examinations) and 1398.47(a)(1) and (a)(2) (requiring PTA candidates to achieve a grade of "C" or better in all coursework) for submission to the Office of Administrative Law (OAL).

The Committee recently published notice of its plans to amend section 1399.50 of its regulations, to increase the initial fee for a PT license and the biennial renewal fee from $40 to $50, and the delinquency fee from $20 to $25. The Committee was scheduled to hold a public hearing concerning these proposed amendments at its January 25 meeting in San Francisco.

PTEC Approves Resolution Regarding Corporate Practice of Physical Therapy. At the Committee's December 14 meeting, DCA legal counsel Greg Gorges advised PTEC that the Secretary of State's office had requested that PTEC adopt a resolution regarding the practice of physical therapy through a general business corporation as opposed to a professional corporation. The Committee expressed concern that general business corporations may operate their

practice in a manner inconsistent with professional standards. Mr. Gorges advised PTEC that existing law allows these corporations to exist and does not expressly prohibit them from conducting a physical therapy professional business; further, Gorges advised that such a prohibition would require legislation of relative complexity. PTEC then adopted the resolution drafted by the Secretary of State's office which states, among other things, that subsequent to 1969, when physical therapy professional corporations were first authorized, and prior to 1977, when the General Corporation Law was revised, no statute specifically prohibited the practice of the profession of physical therapy through a general corporation. The resolution further states that during that same period, the existence of a statutory authorization for a physical therapy professional corporation was no basis to imply a prohibition against the use of a general corporation for the conduct of a physical therapy professional business. Finally, the resolution states that existing law should not be interpreted to prohibit the corporate practice of the profession of physical therapy through a general business corporation, so long as the individuals actually providing the physical therapy services are licensed physical therapists. The Secretary of State's office will now regard this resolution as legal authority upon which it may rely in approving the applications of general corporations to conduct a physical therapy professional business.

Budget Report. At PTEC's December 14 meeting, Executive Officer Steven Hartzell informed the Committee that the budget change proposals (BCPs) which PTEC had requested were partially granted. Although the Committee will probably not receive the funds it requested for equipment and supplies, Hartzell anticipated that PTEC would receive funds to enable it to administer an exam in February. This news was welcomed by Committee members, who had been informed at the October 11 meeting that the exam would have to be cancelled.

LEGISLATION:

Anticipated Legislation. At its December 14 meeting, PTEC's legislative subcommittee proposed legislation to increase the renewal fee ceiling to $80, with provisions for reducing this fee by rulemaking if necessary. The draft bill would also allow the Committee to recover costs for disciplinary investigations and proceedings from the disciplined licensee. The Committee adopted this proposal unanimously. Also, the Committee may support legislation which would change its name to the Physical Therapy Examining Board.

LITIGATION:

In *California Chapter of the American Physical Therapy Ass'n et al., v. California State Board of Chiropractic Examiners, et al.*, Nos. 35-44-85 and 35-24-14 (Sacramento Superior Court), petitioners and intervenors (including PTEC) challenge BCE's adoption and OAL's approval of section 302 of the Board's rules, which defines the scope of chiropractic practice. Following the court's August 1989 ruling preliminarily permitting chiropractors to perform physical therapy, ultrasound, thermography, and soft tissue manipulation, the parties engaged in extensive settlement negotiations. A status conference scheduled for October 5 was postponed indefinitely. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 106; Vol. 9, No. 4 (Fall 1989) p. 127; and Vol. 9, No. 3 (Summer 1989) p. 118 for background information on this case.)

RECENT MEETINGS:

At its October 11 meeting, PTEC discussed its intention to visit all sites within the state which PTEC has approved to supervise foreign-trained physical therapists during their required period of clinical training, pursuant to Business and Professions Code section 2653(a)(3). The Committee has already investigated some of these sites and the results have been favorable. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 81 for background information.)

FUTURE MEETINGS:

April 5 in Long Beach.
June 7 in San Diego.

PHYSICIAN ASSISTANT EXAMINING COMMITTEE

Executive Officer: Ray Dale
(916) 924-2626

The legislature established the Physician Assistant Examining Committee (PAEC) in Business and Professions Code section 3500 *et seq.*, in order to "establish a framework for development of a new category of health manpower—the physician assistant." Citing public concern over the continuing shortage of primary health care providers and the "geographic maldistribution of health care service," the legislature created the PA license category to "encourage the more effective utilization of the skills of physicians by enabling physicians to delegate health care tasks...."

PAEC certifies individuals as PAs, allowing them to perform certain medical procedures under a physician's supervision, such as drawing blood, giving injections, ordering routine diagnostic tests, performing pelvic examinations, and assisting in surgery. PAEC's objective is to ensure the public that the incidents and impact of "unqualified, incompetent, fraudulent, negligent and deceptive licensees of the Committee or others who hold themselves out as PAs [are] reduced." PAEC's regulations are codified in Division 13.8, Title 16 of the California Code of Regulations (CCR).

PAEC's nine members include one member of the Medical Board of California (MBC), a physician representative of a California medical school, an educator participating in an approved program for the training of PAs, one physician who is an approved supervising physician of PAs and who is not a member of any division of MBC, three PAs, and two public members.

MAJOR PROJECTS:

Scope of Practice Regulations Forwarded to OAL Over DCA Director's Veto. On October 12, Department of Consumer Affairs (DCA) Director Michael Kelley disapproved PAEC's scope of practice regulations adopted by MBC's Division of Allied Health Professions (DAHP) in December 1989. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 90; Vol. 10, No. 1 (Winter 1990) pp. 81-82; and Vol. 9, No. 4 (Fall 1989) p. 68 for background information.) The proposed regulatory scheme would permit a PA's supervising physician (SP) to specify the type and limit of delegated medical services based on the SP's specialty or usual and customary scope of practice. It would also authorize PAs to initiate certain tests and treatments, and to provide necessary treatment in emergency or life-threatening situations. Kelley found that the regulations are "injurious to the public health, safety, and welfare," and would allow "inadequate supervision in medical procedures of a substantial and complex nature."

However, at its November 16 meeting, DAHP voted unanimously to overrule the DCA Director's disapproval of the rulemaking file, and to forward it to the Office of Administrative Law (OAL). At this writing, OAL is still reviewing the rulemaking file.

Other Proposed Regulations. PAEC has proposed an amendment to section 1399.553, Division 13.8, Title 16 of the CCR, which would increase the approval fee and the biennial renewal fee for physician supervisors. The approval fee, currently at $50, would be

increased to $100; the biennial renewal fee for physician supervisors would be raised from $100 to $150. PAEC was scheduled to hold a public hearing on this proposed regulatory change on January 4 in Napa.

DAHP Drops Legislation to Tighten Control Over Allied Health Committees. On October 17, DAHP and the allied health licensing programs under MBC's jurisdiction (including PAEC) held a joint meeting in Inglewood. (*See supra* agency report on MBC; *see also* CRLR Vol. 10, No. 4 (Fall 1990) pp. 81-82 and 90 for background information.) On the agenda was a discussion of proposed legislation amending Business and Professions Code section 2006 to strengthen DAHP's supervisory control over the allied health boards and committees.

Prior to discussion of the legislation, each of the allied health committees made a presentation regarding their individual diversion, investigation, and enforcement programs. DAHP members were largely uninformed about many of these programs, because Division member liaisons assigned to each respective allied health board or committee rarely attend their meetings. This fact contributed to the strong and unified opposition expressed by representatives of the boards and committees regarding the proposed legislation; they believed the amendments would create an extra and unnecessary layer of government. The board and committee members further questioned the Division's ability to supervise them, considering their past failure to do so.

At its November 16 meeting, DAHP decided to drop the proposed amendments to section 2006, and attempt to work more cooperatively with the allied health boards and committees within the confines of existing section 2006 and each allied health group's individual enabling statute.

PAEC Newsletter. PAEC recently released the third edition of its newsletter. In the "Chairperson's Report," PAEC Chair Janice Tramel announced that the Committee has decided to list in the newsletter the names of disciplined PAs. The newsletter also included articles regarding the following topics:

-PAEC's drug and alcohol diversion program created by AB 4510 (Chapter 385, Statutes of 1988); licensed PAs with a chemical dependency problem should call 1-800-522-9198, a 24-hour toll-free number;

-the PA's role in skilled nursing facilities; and

-HIV disease and the primary care PA.

LEGISLATION:

Anticipated Legislation. At its October 5 meeting, PAEC decided to seek a bill similar to AB 3268 (Clute), which was vetoed by the Governor on September 30. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 90 for background information.) Such legislation would authorize PAEC to order a PA to undergo a professional competency examination if, after investigation and review by specified persons, there is reasonable cause to believe that the PA is unable to practice with reasonable skill and safety to patients. It would also include licensed PAs among persons who may administer a narcotic controlled substance in treating an addict for addiction. One section of AB 3268 (Clute) which will be dropped from the new bill is a section which would have allowed PAEC to collect "accrued" renewals and a delinquency fee as a condition of renewal of expired licenses of PAs who try to renew within five years of their last licensure. In his veto message, the Governor stated that this provision led to his veto, because the bill did not specify that it was applicable only to those individuals who have been practicing unlicensed. Governor Deukmejian did not wish to impose a penalty on those licensees who had not been practicing illegally but wished to renew within five years of their last licensure.

PAEC also decided to seek an increase in the statutory ceiling on its licensing fees. A new ceiling of at least $300 for the initial PA license and for the initial supervising physician approval was discussed. Biennial renewal fee and application fee ceilings would also be increased. Executive Officer Ray Dale stated that the fee increases will be necessary to avoid a projected deficit by fiscal year 1993-94.

RECENT MEETINGS:

At its October 5 meeting in San Diego, PAEC members elected Janice V. Tramel as Chair and Nancy B. Edwards as Vice-Chair of PAEC for 1991.

Staff member Jennifer Barnhart presented a status report on PAEC's Diversion Program. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 90 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 107 for background information.) The brochure had been mailed but, as of October 5, no one had yet enrolled in the program. The first mailing was to PAs only; PAEC eventually wants to send the brochures to supervising physicians as well.

FUTURE MEETINGS:

May 17 in Sacramento.
July 26 in Newport Beach.
October 11 in Monterey.

BOARD OF PODIATRIC MEDICINE

Executive Officer: James Rathlesberger
(916) 920-6347

The Board of Podiatric Medicine (BPM) of the Medical Board of California (MBC) regulates the practice of podiatry in California pursuant to Business and Professions Code section 2460 *et seq.* BPM's regulations appear in Division 13.9, Title 16 of the California Code of Regulations (CCR).

The Board licenses doctors of podiatric medicine (DPMs), administers two licensing examinations per year, approves colleges of podiatric medicine, and enforces professional standards by initiating investigations and disciplining its licentiates, as well as administering its own diversion program for DPMs. The Board consists of four licensed podiatrists and two public members; at this writing, one of the public member seats is vacant.

MAJOR PROJECTS:

DAHP Drops Legislation to Tighten Control Over Allied Health Committees. At an October 17 joint meeting between MBC's Division of Allied Health Professions (DAHP) and representatives of all the allied health boards and committees (including BPM), the allied health groups expressed strong and unified opposition to DAHP's proposal to seek legislation amending section 2006 of the Business and Professions Code, to give DAHP tighter control over the activities of the allied health professions. (*See supra* agency report on MBC; *see also* CRLR Vol. 10, No. 4 (Fall 1990) pp. 81-82 and 91 for background information.) At BPM's December 7 meeting, Executive Officer James Rathlesberger reported that DAHP, at its November 16 meeting, decided to drop its plans to amend section 2006, and to attempt to work more cooperatively with the allied health boards and committees under its jurisdiction.

Licensing Exam Statistics. In November 1990, BPM's licensing examination was administered to 29 applicants; 23 passed the exam for a passage rate of 79%. This figure is considerably below the 92% passage rate in May 1990, although the November exam pass rate is usually lower than that for the May exam. As well, the November exam is usually given to a much smaller group of applicants. The average pass rate for November exams for the past seven years is 78%.

Enforcement Update. The final statistics for the 1989-90 fiscal year enforcement efforts are as follows: 201 complaints were received and investigated. Seven of these were forwarded to the Attorney General's Office; six resulted in the filing of accusations. Four licenses were revoked and one suspended; two other licentiates were placed on probation. These figures represent nearly a 100% increase in enforcement, despite a 4% decline in the number of complaints received.

To date, for fiscal year 1990-91, two accusations have been filed; two doctors have had their licenses revoked, and one other has been placed on suspension. Major future expenditures are anticipated with regard to the *Apkarian/Weber* matter. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 91-92 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 109 for detailed background information on this case.) On September 20, BPM filed an accusation against three defendants in that case for violation of the terms of the superior court's March 1990 order, and future criminal charges may result.

BPM intends to activate its citation and fine program this year. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 64 and Vol. 8, No. 3 (Summer 1988) p. 68 for background information.) This program would allow MBC investigators to document violations and recommend appropriate disciplinary action short of license revocation or suspension, reducing the time delay between complaint reporting and discipline in appropriate situations. BPM's Executive Officer, in consultation with Department of Consumer Affairs legal staff, is permitted to issue citations and fines for statutory and regulatory violations.

OAL Determination Sought. At this writing, BPM is still awaiting a determination from the Office of Administrative Law (OAL) regarding a BPM policy allowing DPMs to use the title "podiatric physician and surgeon." (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 91-92 for detailed background information on this case.) The California Medical Association (CMA) recently challenged the 1984 policy, claiming that it amounts to underground rulemaking. BPM defends the policy by claiming that it is insurance-driven, in that some insurance companies will not pay DPM claims in the belief that a DPM is not a treating physician and surgeon. OAL's determination was expected in early September; at this writing, the policy is still under review.

LEGISLATION:

Anticipated Legislation. At its December 7 meeting, BPM voted unanimously to seek legislation to reduce its initial license fee from $800 to $400. (*See infra* RECENT MEETINGS.)

RECENT MEETINGS:

At its December 7 meeting in Irvine, BPM noted that it is beginning to experience budget problems, although not the usual type. Rather, BPM has a budget surplus equal to about 22 months of its operating expenses. State policy requires state agencies to operate with a surplus of approximately six months; when a 24-month surplus accrues, the excess is removed and stored in a reserve fund which is unavailable to the agency which collected it and potentially available to the state's general fund. BPM's current surplus represents a dramatic change from approximately two years ago, when the Board was almost unable to pursue enforcement actions because of a lack of funding. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 56 and Vol. 8, No. 4 (Fall 1988) p. 64 for background information.)

In acting to reduce its surplus, the Board eliminated the $30 loan deferment application fee. Thus, recent graduates who need to defer repayment on their loans until after residency need not pay a fee to have their application processed. The Board also increased expert witness fees, bringing them into conformity with those used by MBC. This should make it easier for the Board to retain expert witness testimony. Combined, these efforts will cost BPM about $8,000 per year. The Board also voted to pursue legislation to reduce the initial license fee for first-time licentiates from $800 to $400. If successful, this could reduce annual revenue by about $26,000.

All Board members expressed a desire to be cautious about reducing the budget surplus, because of the recent financial trouble BPM has experienced and the Board's highly volatile enforcement costs which could quickly reduce any surplus.

Over the past several months, BPM has been working on revising its conflict of interest policy (see CRLR Vol. 10, No. 4 (Fall 1990) pp. 92-93 for background information), with definitive results achieved at the December Board meeting. The Board adopted a conflict of interest policy under which a Board member shall disqualify himself or herself and shall not participate in the discussion of, influence or attempt to influence the outcome of, or the vote on any matter before the Board, if the member:

-has ever had a personal relationship with the licensee in question;

-has ever practiced with, supervised, or otherwise reviewed any aspect of the medical practice of the licensee;

-is or was a member of the same hospital staff with the licensee or is on staff at a hospital that is recruiting or seeking to appoint the licensee to its staff and a personal relationship exists or existed with the licensee;

-has ever reviewed the licensee in any peer review capacity;

-has ever had any business relationship, professional or otherwise, with the licensee;

-has ever been in a podiatric professional practice or in the same medical corporation, medical group, partnership, or independent practice association with the licensee;

-has any faculty appointment to a podiatric medical school sponsoring, employing, recruiting, or appointing the licensee and a personal relationship exists or existed with the licensee;

-has ever had any relationship or ever been in any situation that may appear to compromise consideration or examination of the licensee;

-has a financial interest in the outcome of an action of the Board which means the action may affect a source of income of $250 or more promised or received by the member, or may affect any business entity in which the member is a director, officer, partner, trustee, employee, or holds any position of management; or

-has discussed the licensee's qualifications or the facts of the licensee's case with another person other than another member of the Board, the staff of the Board, or any of its legal counsel, and a personal relationship exists or existed with the licensee.

Further, under BPM's policy, no Board member shall serve as an expert witness or consultant in any legal or administrative matter involving a DPM.

This conflict of interest statement was adopted from that used by the Medical Board of California. Similar policies were adopted for the Board's podiatric medicine consultants, exam commissioners, and for podiatric expert witnesses (although the last is subject to further revision).

FUTURE MEETINGS:

March 1 in Sacramento.
June 14 in San Francisco.
October 4 in Los Angeles.

BOARD OF PSYCHOLOGY

Executive Officer: Thomas O'Connor
(916) 920-6383

The Board of Psychology (BOP) (formerly the "Psychology Examining Committee") is the state regulatory agency for psychologists under Business and Professions Code section 2900 *et seq.* BOP sets standards for education and experience required for licensing, administers licensing examinations, promulgates rules of professional conduct, regulates the use of psychological assistants, investigates consumer complaints, and takes disciplinary action against licensees by suspension or revocation. BOP's regulations are located in Division 13.1, Title 16 of the California Code of Regulations (CCR). BOP is composed of eight members, three of whom are public members.

MAJOR PROJECTS:

Regulatory Amendments on Supervised Professional Experience. At its November meeting, BOP discussed the latest draft of proposed amendments and additions to section 1387, Chapter 13.1, Title 16 of the CCR. Through the amendments and additions, BOP intends to further define the criteria for and responsibilities of a "qualified primary supervisor"; specify the length and type of required supervised professional experience; define acceptable group supervision; and delineate the responsibilities between supervisors and supervisees regarding the proper logging of supervised experience to ensure accurate verification that supervisees have met all requirements. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 93 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 110 for background information.)

Discussion of draft proposals was scheduled to continue at BOP's February meeting, with hopes of settling on a final draft upon which to base a formal public hearing at a later date.

Draft Language Addressing Dual Relationships. On December 7, BOP and the Board of Behavioral Science Examiners (BBSE) held a joint informal public hearing to receive testimony regarding draft language of a proposed regulatory change which would define and prohibit certain relationships between a therapist and a patient outside the primary relationship of providing professional psychological services.

The proposed regulatory change, which would add section 1396.5 to Chapter 13.1, Title 16 of the CCR, would prohibit secondary relationships of a personal, social, or business nature, and would delineate proper procedure for prevention and termination of any such "dual relationship" between a psychology professional and his/her patient.

BOP and BBSE are currently reviewing public comment from the December 7 meeting; BOP was scheduled to report on the status of the proposal at its February meeting.

LEGISLATION:

At its November meeting, BOP discussed the possibility of pursuing legislation requiring continuing education (CE) as a condition of license renewal. No such action appears imminent, however, as certain complications exist which the Board has discussed in the past but never resolved. First and foremost is the question whether BOP would assume direct control over administration of a CE program; such a supervisory role would require additional staff and funding to assure proper standards at those schools offering the required curriculum. After some discussion and Executive Officer Tom O'Connor's reminder that the Board has traditionally opposed CE, Board members simply resolved to slate further discussion of a CE proposal for future meetings.

LITIGATION:

In *McGuigan v. California Board of Psychology,* No. 364481 (Sacramento County Superior Court), the Center for Public Interest Law (CPIL) filed a notice of appeal on behalf of petitioner Dr. Frank McGuigan on November 13 in the Third District Court of Appeal, requesting reversal of the trial court's order dismissing Dr. McGuigan's petition for writ of mandate. The petition was dismissed as moot on August 31, subsequent to BOP's belated agreement to grant Dr. McGuigan a statement of issues and an administrative hearing regarding its denial of his 1984 application for issuance without examination of a license to practice psychology. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 94 for background information.) Dr. McGuigan seeks a waiver of the Board's licensing examination pursuant to section 2946 of the Business and Professions Code, based on (1) his licensure in another state with requirements substantially equivalent to those of California, and (2) his significant contribution to psychology. Through the appeal, Dr. McGuigan and CPIL continue to assert that Dr. McGuigan and similarly situated applicants are entitled to a hearing by law, and not merely at the discretion of BOP.

In *Gootee v. Lightner,* 90 Daily Journal D.A.R. 11723 (Sept. 24, 1990), the Fourth District Court of Appeal held that the testimonial privilege pursuant to Civil Code section 47(2) bars tort claims (other than for malicious prosecution), and thus protected the respondent, an independent psychologist, from a malpractice suit where he was retained only to evaluate appellant and his family in connection with a custody matter, and not to provide therapy.

In mid-1985, appellant's former wife filed a petition for change of custody, seeking custody of her three minor children who were then residing with appellant. The parties stipulated to undergo psychological testing and evaluation in the context of the custody proceeding and to retain respondent, not for therapy, but only to evaluate the family in connection with the custody matter. After conducting various tests and interviews, respondent prepared a report and subsequently testified at the custody hearing, recommending custody be granted to appellant's former wife with visitation rights for appellant. Custody was awarded to appellant's wife, allegedly based in part on respondent's recommendations. After subsequent litigation, however, custody apparently was returned to appellant.

Thereafter, appellant sued respondent for professional negligence, alleging negligent administration and interpretation of tests, and destruction of raw test data (*i.e.*, a tape recording of a testing session). Appellant alleged such destruction impeded his ability to have the test results reinterpreted by another expert psychologist, and also impeded his ability to cross-examine respondent.

In holding for respondent, the court cited the absolute testimonial privilege in Civil Code section 47(2), and numerous policy considerations supporting it, including finality of litigation. "Appellant had and exercised his opportunity to challenge [respondent's] methods and conclusions, and having lost the original contest, should not now be permitted to institute new litigation over those same conclusions." Additionally, the court noted that the privilege extends not only to the testimony itself, but to conduct and activities which occurred before and outside of the judicial or legislative proceeding but which led to and related to the privileged testimony.

RECENT MEETINGS:

At BOP's November meeting, Dr. Frank Powell, the Board's delegate to the American Association of State Psychology Boards (AASPB), reported that the Association is moving toward development of a national data bank to serve as a central repository for psychologists' credentials. Such a national repository would provide easier and more

dependable access to such records, thereby enabling a psychologist to prove possession of required credentials without reliance on difficult-to-locate professors and supervisors.

The Association is also discussing a second data bank for enforcement and disciplinary purposes. However, fundamental questions still exist regarding the operation of such a bank, including who would have access to the information, and whether/when to delete information concerning disciplined members of the profession subsequent to their compliance with disciplinary measures. Discussion of these questions will continue in hopes of achieving data bank operation in the near future; Dr. Powell reported that the Association looks forward to the enhancement of consumer protection that such a system would achieve.

Also at its November meeting, BOP revised its policy regarding reasonable accommodation for candidates for the written examination who claim English as a second language (ESL). As adopted last May, ESL candidates providing proof of immigration to the United States within the last ten years are allowed up to two additional hours in which to complete the written exam, if such immigration did not occur prior to the beginning of the candidate's university training. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 111 for background information.) The November revision substituted the words "first entry" for "immigration," in order to close a loophole which was enabling some long-time residents who had only recently formally immigrated to take advantage of the policy.

FUTURE MEETINGS:

March 15-16 in San Diego.
May 17-18 in Los Angeles.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY EXAMINING COMMITTEE

Executive Officer: Carol Richards
(916) 920-6388

The Medical Board of California's Speech-Language Pathology and Audiology Examining Committee (SPAEC) consists of nine members: three speech pathologists, three audiologists and three public members (one of whom is a physician).

The Committee registers speech pathology and audiology aides and examines applicants for licensure. The Committee hears all matters assigned to it by the Board, including, but not limited to, any contested case or any petition for reinstatement, restoration, or modification of probation. Decisions of the Committee are forwarded to the Board for final adoption.

SPAEC is authorized by the Speech Pathologists and Audiologists Licensure Act, Business and Professions Code section 2530 *et seq.*; its regulations are contained in Division 13.4, Title 16 of the California Code of Regulations (CCR).

MAJOR PROJECTS:

Proposed Fee Increases. Currently, section 1399.186(b), Division 13.4, Title 16 of the CCR, imposes a $60 license renewal fee for speech pathology and audiology licenses which expire on or after December 31, 1987. At its November 30 meeting, SPAEC decided to seek an increase in the renewal fee to $75, due to a potential budget deficit due to lack of revenue. SPAEC planned to formally publish the proposed regulatory change and hold a public hearing on February 22 in San Francisco.

Renewal fees are currently collected on a biennial basis, and all renewal fees are due on the same day. Due to cash flow problems resulting from this system, SPAEC eventually plans to propose a cyclical renewal plan, which will allow SPAEC to collect renewal fees on a year-round basis.

Reactivation of Abandoned Files. Under section 1399.154(d) of SPAEC's regulations, an application for licensure is deemed abandoned if it is not complete within two years from the date on which the application is filed, unless the applicant has requested an extension from the Committee.

Because SPAEC has been receiving many requests for reactivation of applications which were either abandoned or unreasonably extended, it decided to adopt a policy to deal with extension requests and abandoned files. Under its new policy, it will automatically grant a six-month extension upon request with 45 days' notice to SPAEC. Without such a request for extension, the applicant's file will be classified as abandoned and subject to destruction. Any request for an extension longer than six months will not be automatically granted, but will be presented to SPAEC for determination.

DAHP Drops Legislation to Tighten Control Over Allied Health Committees. At its November 30 meeting, SPAEC discussed the October 17 joint meeting between MBC's Division of Allied Health Professions (DAHP) and representatives of all the allied health boards and committees (including SPAEC). At that meeting, the allied health groups expressed strong and unified opposition to DAHP's proposal to seek legislation amending section 2006 of the Business and Professions Code, to give DAHP tighter control over the activities of the allied health professions. (*See supra* agency report on MBC; *see also* CRLR Vol. 10, No. 4 (Fall 1990) p. 96 for background information.) SPAEC Executive Officer Carol Richards reported that DAHP, at its November 16 meeting, decided to drop its plans to amend section 2006, and to attempt to work more cooperatively with the allied health boards and committees under its jurisdiction.

Exam Waiver Interview. Previously, section 1399.159 of SPAEC's regulations required California licensure applicants to have taken the national examination in their respective field within the five years preceding the date on which the application for licensure is filed. However, SPAEC recently amended section 1399.159, which now allows the Committee to waive the five-year requirement under certain conditions, one of which is that the applicant must demonstrate to SPAEC that he/she maintained his/her knowledge of speech pathology or audiology. The Committee may require such an applicant to personally appear before it for an interview.

At its September 28 meeting, SPAEC tentatively decided to require the following documentation to be in the Committee's possession at the time of the applicant's examination waiver interview: verification that the license application is complete; transcripts; exam scores; an updated resume; any extensive writing for publication which is applicable to the applicant's field; notarized copies of continuing education; and documentation of work experience. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 96 for background information.) At its November 30 meeting, SPAEC appointed a subcommittee to formulate definite guidelines for the required documentation; the subcommittee was directed to have the guidelines ready for the February 22 meeting in San Francisco.

Citation and Fine Regulations Approved. On December 21, the Office of Administrative Law approved SPAEC's adoption of new sections 1399.198-.199, which implement the Committee's citation and fine authority under Business and Professions Code section 125.9. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 111 and Vol. 10, No. 1 (Winter 1990) pp. 85-86 for background information.)

RECENT MEETINGS:

At its September meeting, SPAEC discussed the possibility of implementing mandatory continuing education

(CE), but decided that its budget would not accommodate the start-up costs of getting CE legislation passed and hiring more staff to enforce the legislation. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 96 for background information.) At its November meeting, SPAEC reaffirmed its commitment to the implementation of CE. The Committee further decided that it would try to work around budgetary problems and put the issue at the top of the agenda for its April meeting.

FUTURE MEETINGS:
April 18 in Long Beach.
June 28 in San Francisco.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Ray F. Nikkel
(916) 920-6481

Pursuant to Business and Professions Code section 3901 *et seq.*, the Board of Examiners of Nursing Home Administrators (BENHA) develops, imposes, and enforces standards for individuals desiring to receive and maintain a license as a nursing home administrator (NHA). The Board may revoke or suspend a license after an administrative hearing on findings of gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying for a license, treating any mental or physical condition without a license, or violation of any rules adopted by the Board. BENHA's regulations are codified in Division 31, Title 16 of the California Code of Regulations (CCR). Board committees include the Administrative, Disciplinary, and Education, Training and Examination Committees.

The Board consists of nine members. Four of the Board members must be actively engaged in the administration of nursing homes at the time of their appointment. Of these, two licensee members must be from proprietary nursing homes; two others must come from nonprofit, charitable nursing homes. Five Board members must represent the general public. One of the five public members is required to be actively engaged in the practice of medicine; a second public member must be an educator in health care administration. Seven of the nine members of the Board are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each appoint one member. A member may serve for no more than two consecutive terms.

MAJOR PROJECTS:

Residential Care Facility Administrator Certification Study. The Department of Social Services' (DSS) advisory committee had until December 1 to release its study on which state agency is best suited to implement the certification process for administrators of residential care facilities for the elderly (RCFE). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 96 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 112 for background information.) DSS failed to release its study by that deadline; it now expects to release its report in early 1991.

RECENT MEETINGS:

At BENHA's October 26 meeting, Executive Officer Ray Nikkel introduced proposed continuing education guidelines pursuant to AB 1834 (Connelly) (Chapter 816, Statutes of 1987), which requires NHAs to complete 25% of their continuing education (CE) requirement in the areas of "Aging and Patient Care." The proposed guidelines specify types of CE courses BENHA will accept to fulfill this requirement.

Courses in aging relate to the biological, mental, and sociological aspects of aging. Examples of acceptable courses include those which address the special dietary needs of the elderly; the psychological implications of institutionalization; and protecting the elderly in a restraint-free environment. Acceptable courses in the patient care category must directly relate to patient care, including the physical aspects of care, such as treatment of pressure ulcers; the psychological aspects of care, such as identifying and treating elderly depression; and the sociological aspects of care, such as activities designed to improve socialization skills. BENHA also approves courses focusing on patients' rights in skilled nursing facilities.

At BENHA's December 11 meeting, the Board approved a letter to be sent to preceptors, thanking them for participating in BENHA's administrator-in-training (AIT) program. The letters will be sent upon completion of each preceptor's field work with an AIT. All AITs are required to complete a 1,000-hour internship prior to taking the NHA exam. Any skilled nursing facility may participate in the program, although BENHA will not approve an AIT sponsorship when the facility has had licensing problems. BENHA holds one-day preceptor training sessions every two months. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 112 for background information.)

Also at the December 11 meeting, Executive Officer Ray Nikkel presented a report on the November meeting of the National Association of Boards of Examiners for Nursing Home Administrators (NAB). Of major concern to NAB members is U.S. Representative Henry Waxman's (D-California) addition of a section in the federal budget bill which proposes to remove federal requirements for individual state boards regulating nursing home administrators. Mr. Nikkel opined that Representative Waxman's action may be prompted by the belief that when the Health Care Financing Administration (HCFA) releases its national nursing home administrator standards, HCFA or the U.S. Department of Health and Human Services (DHHS) will enforce those standards on a national basis; therefore, state boards may be deemed duplicative and unnecessary. Mr. Nikkel expressed concern as to whether a federal agency will be able to effectively administer state exams and oversee the qualification process of administrators.

FUTURE MEETINGS:
To be announced.

BOARD OF OPTOMETRY

Executive Officer: Karen Ollinger
(916) 739-4131

Pursuant to Business and Professions Code section 3000 *et seq.*, the Board of Optometry is responsible for licensing qualified optometrists and disciplining malfeasant practitioners. The Board establishes and enforces regulations pertaining to the practice of optometry, which are codified in Division 15, Title 16 of the California Code of Regulations (CCR). The Board's goal is to protect the consumer patient who might be subjected to injury resulting from unsatisfactory eye care by inept or untrustworthy practitioners.

The Board consists of nine members. Six are licensed optometrists and three are members of the community at large. Two of the Board's positions which are reserved for licensed optometrists are presently vacant.

MAJOR PROJECTS:

Board Responds to Critical Management Study. The Board recently commissioned Ernst & Young to perform a management, procedural, and workload measurement study of the Board's operations. The study, which was presented to the Board on September 4, cites chronic understaffing and the cyclical nature of examination activities as sources of major problems for the Board. At the Board's November 29 meeting, Board